



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2004

Mr. Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
1917 IH-35 South
Austin, Texas 78741

OR2004-8636

Dear Mr. Cook:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210802.

The Texas Board of Professional Engineers (the "board") received a request for a named individual's entire file. You state that have released some of the requested information. You also state that you have withheld some information based on previous determinations issued by this office. *See* Open Records Letter Nos. 2003-3624 (2003) (authorizing board to withhold non-governmental e-mail addresses of members of public pursuant to section 552.137, provided relevant individuals have not consented to release of e-mail addresses), 2001-4612 (2001) (authorizing board to withhold social security numbers of applicants and licensees pursuant to section 51.251 of Occupations Code);¹ *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations).

Initially, we note that the requestor identifies himself as the legal representative of the named individual. Section 552.023 of the Government Code gives a person a special right of access

¹We note that House Bill No. 2812, which enacted section 56.001 of the Occupations Code, also repealed the note to section 51.251 of the Occupations Code. *See* Act of May 22, 2001, 77th Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (repealing section 1, chapter 314, Acts of the 76th Legislature, Regular Session, 1999). We further note that the Seventy-eighth Legislature renumbered former section 56.001 of the Occupations Code as section 58.001. *See* Act of June 21, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Sess. Law Serv. 4146. The language of section 58.001 of the Occupations Code corresponds in substance to the language of the former note to section 51.251 of the Occupations Code.

to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023. The protections of section 552.137 of the Government Code and section 58.001 of the Occupations Code are intended to protect an individual's privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or that person's authorized representative on grounds that information is considered confidential by privacy principles). Consequently, the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have not been met in this situation.² *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001). Thus, you may not rely on Open Records Letter Nos. 2001-4612 (2001) or 2003-3624 (2003) with respect to the requestor's client's social security number and e-mail address, and they must be released to him.

You claim that the information you have highlighted is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. *See* Gov't Code § 552.101. You contend that some of the submitted information relating to references and reference comments is excepted from disclosure under the Engineering Practice Act, chapter 1001 of the Occupations Code. Section 1001.212 of the Occupations Code provides:

(a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the Board relating to an applicant for licensure under this Act is privileged and confidential.

(b) Information described in Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or licensure process. The information is not subject to discovery, subpoena, or other disclosure.

Occ. Code § 1001.212. You contend that the highlighted information in Exhibits 2 and 3 as well as the reference documents submitted as Exhibits 4, 5, 6, 7, and 8 consist of information compiled by the board relating to an applicant for licensure. Thus, you claim this

²The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

information is excepted from disclosure under section 552.101 in conjunction with section 1001.212. Based on your representations and our review of the submitted information, we agree that the information at issue is excepted under section 552.101 in conjunction with section 1001.212 of the Occupations Code. Accordingly, we conclude that the board must withhold this information pursuant to section 552.101 of the Government Code as information made confidential by law. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 210802

Enc. Submitted documents

c: Mr. Bob Kalish
5 Grogans Park, Suite 207
The Woodlands, Texas 77380
(w/o enclosures)